

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

FAIRFAX COUNTY ECONOMIC
DEVELOPMENT AUTHORITY,

Plaintiff,

v.

Case no. CL09-10487

STATUTORY DEFENDANTS PURSUANT
TO VA. CODE § 15.2-2650, ET SEQ.,

Defendants.

ANSWER

OBJECTION TO CONSOLIDATION

COMES NOW Parkridge 6 LLC (“Parkridge”), a statutory defendant, by counsel, and hereby responds to Plaintiff’s Complaint and Motion for Judgment as follows:

1. The allegations of this paragraph are legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.
2. A d m i t t e d .
3. The allegations of this paragraph are legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.
4. Denied. The County has made a commitment of 16.1% of the total costs of Phase I for the Dulles Rail Extension, section 2.2 (1) (c) of Exhibit A. The total cost of phase I is incorrectly stated at \$2.647 billion; the real figure, as agreed between MWAA and the FTA in the full funding grant agreement dated March 10, 2009, is \$3.265 billion. 16.1% of this figure is

\$525,000,000.

5. Parkridge is without sufficient information to admit the allegations of this paragraph and therefore denies same and demands strict proof.
6. Admitted, except that the contribution committed to by Fairfax is at least \$520,000,000, with no guarantee it will not go higher.
7. Parkridge is without sufficient information to admit the allegations of this paragraph and therefore denies same and demands strict proof. It is apparent that sources of funding mentioned in the complaint are insufficient to satisfy Fairfax's commitment.
8. The allegations of this paragraph are legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.
9. A d m i t t e d .
10. The allegations of this paragraph are legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.
11. The allegations of this paragraph are legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.
12. It is admitted that the District is a local transportation district within the Commonwealth of Virginia, with its principal office located at 12000 Government Center Parkway, Fairfax, Virginia 22035. The remaining allegations are denied.

13. Denied. The District was improperly constituted. For details, consult the litigation begun by defendants herein and presently on appeal to the Virginia Supreme Court (Fairfax CL 2009-2083).

14. Denied. Both the substance and procedure of the establishment of the District was flawed (Fairfax CL 2009-2083).

15. Admitted.

16. Admitted, although Parkridge expressly denies that the Special Improvements Tax is lawful under the Virginia Constitution, and denies that it was properly established.

17. The allegations of this paragraph are legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.

18. The allegations of this paragraph are legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.

19. Admitted.

20. The allegations of this paragraph are legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.

21. Parkridge is without sufficient information to admit the allegations of this paragraph and therefore denies same and demands strict proof.

22. Parkridge is without sufficient information to admit the allegations of this paragraph and therefore denies same and demands strict proof.

23. Parkridge is without sufficient information to admit the allegations of this paragraph and therefore denies same and demands strict proof.
24. Parkridge is without sufficient information to admit the allegations of this paragraph and therefore denies same and demands strict proof.
25. Parkridge is without sufficient information to admit the allegations of this paragraph and therefore denies same and demands strict proof.
26. Parkridge is without sufficient information to admit the allegations of this paragraph and therefore denies same and demands strict proof
27. Parkridge is without sufficient information to admit the allegations of this paragraph and therefore denies same and demands strict proof
28. FEW Enterprises is without sufficient information to admit the allegations of this paragraph and therefore denies same and demands strict proof
29. Parkridge is without sufficient information to admit the allegations of this paragraph and therefore denies same and demands strict proof.
30. Parkridge is without sufficient information to admit the allegations of this paragraph and therefore denies same and demands strict proof
31. Parkridge is without sufficient information to admit the allegations in part (i) of this paragraph and therefore denies same and demands strict proof. The allegations of part (ii) of this paragraph are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.
32. A d m i t t e d .
33. The allegations of this paragraph are legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.
34. The allegations of this paragraph are legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.
35. The allegations of this paragraph are legal conclusions to which no response is required. I'o

the extent a response is required, these allegations are denied.

36. The allegations of this paragraph are legal conclusions to which no response is required. To the extent a response is required, these allegations are denied,

37. The allegations of this paragraph are legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.

38. The allegations of this paragraph are legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.

39. D e n i e d .

a. In addition to the above, Parkridge states as follows:

b. On February 12, 2009, Parkridge filed with this Court an Amended Complaint challenging the propriety of establishment of the Special Transportation District. The case number is CL 2009-2083. Following Circuit Court Judge Jane Roush's granting of a demurrer on June 26, 2009, the case is currently on appeal to the Virginia Supreme Court. The grounds for the challenge is the handing down by the Virginia Supreme Court of two cases since the establishment of the Special Tax District, requiring proper notice to those affected by or included in the proposed Special Tax District, and requiring contiguity in the composition of special districts requiring majority (more than 51% by land area or assessed value) consent to their establishment and operation. (GasMart Corp. vs. Board of Supervisors, 269 Va. 334 (2005)). Parkridge maintains that it is premature for this Court to rule that the levy by Fairfax County of the Special Improvements Tax upon property located in the District, particularly with respect to property in the Western (noncontiguous) portion of that District, west of Hunter Mill Road, and the Special Tax Revenues resulting therefrom, comply with the recent rulings on the two issues above by the Virginia Supreme Court on appeal.

VA. Code §15.2-2655 permits, but does not require, consolidation of a loosely drawn class of issues. It is overly broadly drawn and on the face of it, would permit any legal action of any type to be consolidated. The purpose of the statute seems to be to avoid delays, but the fact of the matter is that CL 2009-2083 is months ahead of the current bond validation schedule and therefore is likely to be heard and decided prior to the bond validation suit, which has numerous defects (see accompanying pleading for demurrer/summary judgment). If it is determined that the notice provisions of the Special Transportation District was defective, following the Supreme Court's ruling in Allfirst Trust Company v. County of Loudoun (Loudoun County downzoning), 268 Va. 428 (2004) all subsequent procedure is moot.

WHEREFORE, Parkridge respectfully requests that this Court decline to enter any Final Order implying that the Phase I Dulles Rail Transportation Improvement District was properly constituted. Defendants hereunder also object to any consolidation of its appeal of the currently filed case CL 2009-2083 with an appeal of this Bond Validation Suit. The Supreme Court has enough to do with the various challenges before it without muddying the waters with a variety of claims having nothing to do with the normal scope of a bond validation suit.

PARKRIDGE 6, LLC

WFLP-H LLC

By counsel

Christopher W. Walker

10740 Parkridge Blvd., S. 110

Reston, Virginia 20191

Va. Bar 35491

(703) 758 3807

FAX (703) 391-0909

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of August, 2009, a true and accurate copy of the foregoing was sent via first-class mail, postage prepaid, to:

Thomas O. Lawson, Esq. Lawson & Silek, PLC
10805 Main Street, Suite 200
Fairfax, VA 22030 (Facsimile sent also)

Peter L. Canzano, Esq. Sidley Austin LLP
1501 K St., N.W.
Washington, DC 20005 (Facsimile sent also)

James V. McGettrick, Esq., Assistant County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, VA 22035

Philip G. Sunderland, Esq
Joseph E. Kalet, Esq.
Office of General Counsel
1 Aviation Circle
Washington, D.C. 20001-6000

James N. Markels (VSB #68399)
William T. Welch (VSB #34322)
General Counsel, P.C.
6862 Elm Street, Suite 800
McLean, VA 22101

Christopher W. Walker